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DOCKET FILE COPY ORIGINAL

July 11, 1997

William F. Caton, Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: **SNET Comments in CS Docket No. 97-98**

Mr. Caton:

Due to an inadvertent clerical error, it has come to my attention that The Southern New England Telephone Company's (SNET's) Comments filed with the Commission on June 27, 1997 were missing page 7. SNET herein refiles its Comments in their entirety. SNET apologizes for any inconvenience this may have caused.

Should you have any questions regarding this filing, please contact me at (203) 771-8514.

Respectfully submitted,

Wendy Bluemling

Attachments

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Rules and	)	CS Docket No. 97-98
Policies Governing	)	
Pole Attachments	)	

COMMENTS OF
THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

The Southern New England Telephone Company ("SNET") respectfully submits its comments in the above referenced proceeding.[1] SNET presents comments on the Federal Communications Commission's ("Commission's") proposed modifications to the Commission's rules relating to the maximum just and reasonable rates utilities may charge for attachments made to pole, duct, conduit or rights-of-way. The Commission's proposed formula would apply to all telecommunications carriers until the future adoption of new rules and policies specified by the Telecommunications Act of 1996.[2]

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[1] Notice of Proposed Rulemaking, In the Matter of Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, FCC 97-94, released March 14, 1997 ("Notice").

[2] Notice at paras. 1 and 5. The Commission states that it will propose rules and seek comment in a separate Notice. Under the requirements of the Act, such rules are to become effective five years after enactment, i.e., February 8, 2001.

I. INTRODUCTION AND SUMMARY

The Commission recognizes that its authority under Section 224 of the Act is limited when a state regulates pole attachment rates, terms, and conditions.[3] Reversion of jurisdiction to the Commission under Section 224 of the Act occurs only if a state has not issued and made effective rules implementing its regulatory authority over pole attachment.[4] Intervention by the Commission is unnecessary where a state regulatory authority regulates the rates, terms and conditions for pole attachments and access to ducts, conduits and rights-of-way. SNET suggests that such regulation by a state obviates an expansive role for the Commission.

Under state review, voluntarily negotiated pole attachment agreements, including pole attachment rates, should be presumptively deemed just and reasonable. Rather than relying upon a formulaic and prescriptive approach, competition is best encouraged by turning first to a market-based process. Only in those instances where parties cannot privately agree should regulatory bodies intervene. Then, the states must continue to have jurisdiction over the specific rates, terms and conditions of access to poles, conduits and rights-of-way.

Today, the Connecticut Department of Public Utility Control ("CDPUC") provides effective regulation of pole attachments under the Connecticut General Statutes Section

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[3] Notice at fn. 10.

[4] Ibid. Reversion to the Commission, with respect to individual matters, also occurs, if the state does not take final action on a complaint within 180 days after its filing with the state, or within the applicable period prescribed for such final action in the state's rules, as long as that prescribed period does not extend more than 360 days beyond the complaint's filing. See also Section 224(c)(3) of the Act.

16-247(h).[5] In addition, what sets Connecticut apart from other states is the manner in which the CDPUC has undertaken its regulatory responsibilities to ensure the determination of just and reasonable rates.

Following the passage of legislation in Connecticut in 1994,[6] the CDPUC addressed criteria necessary for vigorous competition in telecommunications. The regulatory regime established by the CDPUC encourages competition in all market segments.[7] The CDPUC provides oversight to the process by which telecommunications companies and third-parties interconnect to SNET's network. To date, SNET has negotiated interconnection to its network with TCI, AT&T, Brooks Fiber, MCI Metro, TCG, BANM and Springwich LP, TCI, WinStar, and MFS. SNET is currently in negotiation with other Competitive Local Exchange Carriers ("CLECs") and Commercial Mobile Radio Service ("CMRS") providers. In addition, in March 1996, Northeast Utilities, the largest electric utility in Connecticut, announced that it will form a subsidiary to be a joint owner in FiveCom, Inc., to create a regional fiber optic network to offer state of the art telecommunications services.

The CDPUC actively encourages market forces to work effectively to foster competition. In those instances where competing telecommunications firms have elected arbitration under Section 252 of the Act, the CDPUC has applied such principles in its

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[5] Under Sec. 16-247(h), the CDPUC is authorized by the State of Connecticut to adopt regulations governing the use of public rights-of-way, poles, wires and conduits for the provision of telecommunications services.

[6] State of Connecticut Public Act 94-83, "An Act Implementing the Recommendations of the Telecommunications Task Force," effective July 1, 1994.

[7] See Comments of The Southern New England Telephone Company, In the Matter of Access Charge Reform, CC Docket No. 96-262, January 29, 1997.

deliberations.[8] While the CDPUC has not revised previously approved tariffed rates for pole attachments as part of this process, those rates have been fully litigated in prior proceedings and remain in full force and effect except as may be otherwise negotiated in interconnection agreements.

II. STATES CONTINUE TO HAVE JURISDICTION OVER THE RATES, TERMS AND CONDITIONS FOR ACCESS TO POLES, DUCTS AND RIGHTS-OF-WAY

Under the Act, states continue to have jurisdiction over the rates, terms and conditions of access to poles and conduits. The Commission recognizes such limitations to its authority under Section 224(c) of the Act:

> "We conclude that state and local requirements affecting attachments are entitled to deference even if the state has not sought to preempt federal regulations under Section 224(c)."[9]

The scope of a utility's ownership or control of an easement or right-of-way is a matter of state law.[10] Commission rules are not necessary if a state regulates such access. The reasonableness of access must be resolved on a case-by-case review because there are simply too many variables to permit any other approach with respect to the millions of utility poles and untold millions of miles of conduit in the nation.[11] Rather than adopting a comprehensive regime of specific rules, the Commission states that it chose instead to

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[8] As an example, the arbitration proceeding for MCI Telecommunications Corporation under Section 252(b) of the Act, encompassed access to poles, conduits, ducts and rights-of-way. See Decision in CDPUC Docket No. 96-09-09, dated April 16, 1997.

[9] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, released August 8, 1996, at para. 1154. (Interconnection Order).

[10] Interconnection Order at para. 179.

[11] Interconnection Order, First Report and Order, CC Docket No. 96-98 at para. 1143.

establish limited rules to facilitate the negotiation and mutual performance of fair, pro-competitive access agreements.[12] The Commission recognizes that no single set of rules can take into account all of the issues that can arise in the context of a single installation or attachment.[13]

III. PRIVATE AGREEMENTS BETWEEN PARTIES, SUBJECT TO STATE REGULATORY REVIEW, ARE MOST APPROPRIATE

In anticipation of the Notice, a group of electric companies filed a Whitepaper.[14] SNET agrees with the basic premise of the Whitepaper that "the Commission should allow parties to negotiate access to ducts, conduits and rights-of-way."[15] Such a deregulatory and market-based approach would foster the goal of the Act to promote competition.[16] A prescriptive approach is not necessary. By definition, a prescriptive approach is inconsistent with a competitive market.

Pole attachment issues vary greatly among various geographical regions and between urban and rural areas.[17] State commissions are in the best position to adjudicate such issues. Nothing set before the Commission to date has caused a change to its deference to state and local requirements affecting attachments.

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[12] Ibid.

[13] Interconnection Order at para. 1145.

[14] Notice at para. 18 and fn. 93. See also Whitepaper filed by the law firm of McDermott, Will and Emery, on behalf of a group of electric companies dated August 28, 1996 ("Whitepaper").

[15] Whitepaper at page 23.

[16] Ibid.

[17] Interconnection Order at para. 1149.

> "Regulated entities and other interested parties are familiar with existing state and local requirements and have adopted operating procedures and practices in reliance on those requirements. We believe it would be unduly disruptive to invalidate summarily all such local requirements. We thus agree with commenters who suggest that such state and local requirements should be presumed reasonable."[18]

To date, SNET has been successful in negotiating five (5) interconnection agreements with TCI, Winstar, Brooks Fiber, Springwich LP and Bell Atantic NYNEX Mobile (BANM). These agreements, as well as arbitrated agreements, are subject to the review by the CDPUC. SNET maintains that the process of state review continues to work well to afford non-discriminatory access to poles, ducts and rights-of-way. Therefore, the Commission should decline to issue detailed set of rules and rather, defer such matters to the state regulatory authorities.

In fact the Commission recognizes various factors that "vary from region to region, necessitating different operating procedures with respect to attachments."[19] A state regulatory commission is in the best position to understand the impact on attachments caused by "extreme temperatures, ice and snow accumulation, wind, and weather conditions (all) affect(ing) a utility's safety and engineering practices."[20] Therefore, the Commission must continue to defer to state regulation because "such regulations often relate to matters of local concern that are within the knowledge of local authorities."[21]

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[18] Interconnection Order at para. 1154.

[19] Interconnection Order at para. 1149.

[20] Ibid.

[21] Interconnection Order at para. 1154.

III. NO CHANGES TO PRESUMPTIONS ABOUT SPATIAL ISSUES -- SAFETY SPACE, AVERAGE POLE HEIGHT OR USABLE SPACE -- ARE NECESSARY.

The Commission seeks comment about possible changes to presumptions about spatial issues proposed by the electric industry.[22] These suggestions include 1) an increase in the current presumptive pole height; 2) placing appurtenances within the forty inch "safety space;" and 3) modifications to current presumptions about usable space. There is no need to alter such presumptions because there has not been any change to the underlying conditions. For example, SNET continues to utilize a universe of predominantly 35 and 40 foot poles. The proposal to assume that only poles of 40 feet is not valid.[23] In a similar vein, the other proposals to diminish the current safety space and change usable space are not appropriate. Industry-wide safety regulations continue to require such safety space.[24] Lastly, usable space is related to the universe of poles and as demonstrated, requires no modification.

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[22] Notice at paras. 18-20. Changes to these items have the potential to modify the Commission's current pole attachment formula.

[23] See Whitepaper at p.10.

[24] Notice at para. 19.

IV. CONCLUSION

Rather than imposing new rules and preempt state authority over pole attachment rates, the Commission is urged to adopt deregulatory and pro-competitive principles. Such principles are best embodied in encouraging voluntarily negotiated agreements between private parties. State review, on a case-by-case basis, would accomplish the goals of the Act to insure nondiscriminatory access and just and reasonable rates for pole attachments, ducts, conduits and rights-of-way.

Respectfully submitted,

THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

By _____

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June 27, 1997